

JAN 25 2017

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT

SENTENCE BY A PERSON IN FEDERAL CUSTODY

U.S. DISTRICT COURT  
EASTERN DISTRICT OF MO  
ST. LOUIS

<b>United States District Court</b>		District <u>Eastern District of Missouri</u>
Name (under which you were convicted): <u>Brian Hounsom</u>		Docket or Case No.: <u>4:14cr-00246 agf-nab</u>
Place of Confinement: <u>Leavenworth Prison Camp</u>	Prisoner No.: <u>41870-044</u>	
UNITED STATES OF AMERICA		Movant (include name under which convicted) V. <u>Brian Hounsom</u>

**RECEIVED**

JAN 25 2017

**MOTION****BY MAIL**

1. (a) Name and location of court which entered the judgment of conviction you are challenging: United State District Court Eastern District of Missouri Eastern Division  
St. Louis Missouri
- (b) Criminal docket or case number (if you know): 4:14cr-00246 agf-nab
2. (a) Date of the judgment of conviction (if you know): September 1<sup>st</sup> 2015  
(b) Date of sentencing: December 22<sup>nd</sup> 2015
3. Length of sentence: 78 months
4. Nature of crime (all counts):  
1. Conspiracy to distribute and posses with intent to distribute  
one thousand kilograms of marijuana  
2. Conspiracy to launder the proceeds of drug trafficking
5. (a) What was your plea? (Check one)  
(1) Not guilty ☐ (2) Guilty ☒ (3) Nolo contendere (no contest) ☐
- (b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or what did you plead guilty to and what did you plead not guilty to?  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
6. If you went to trial, what kind of trial did you have? (Check one) Jury ☐ Judge only ☐

7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes ☐ No ☒

8. Did you appeal from the judgment of conviction? Yes ☐ No ☒

9. If you did appeal, answer the following:

(a) Name of court: \_\_\_\_\_

(b) Docket or case number (if you know): \_\_\_\_\_

(c) Result: \_\_\_\_\_

(d) Date of result (if you know): \_\_\_\_\_

(e) Citation to the case (if you know): \_\_\_\_\_

(f) Grounds raised: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☒

If "Yes," answer the following:

(1) Docket or case number (if you know): \_\_\_\_\_

(2) Result: \_\_\_\_\_  
\_\_\_\_\_

(3) Date of result (if you know): \_\_\_\_\_

(4) Citation to the case (if you know): \_\_\_\_\_

(5) Grounds raised: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications, concerning this judgment of conviction in any court?

Yes ☐ No ☒

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: \_\_\_\_\_

(2) Docket or case number (if you know): \_\_\_\_\_

(3) Date of filing (if you know): \_\_\_\_\_

(4) Nature of the proceeding: \_\_\_\_\_

(5) Grounds raised: \_\_\_\_\_

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(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐ No ☐

(7) Result: \_\_\_\_\_

(8) Date of result (if you know): \_\_\_\_\_

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: \_\_\_\_\_

(2) Docket of case number (if you know): \_\_\_\_\_

(3) Date of filing (if you know): \_\_\_\_\_

(4) Nature of the proceeding: \_\_\_\_\_

(5) Grounds raised: \_\_\_\_\_

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(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐ No ☐

(7) Result: \_\_\_\_\_

(8) Date of result (if you know): \_\_\_\_\_

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ☐ No ☐

(2) Second petition: Yes ☐ No ☐

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

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12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

**GROUND ONE:** Defendant's counsel was ineffective and deficient in that  
he failed to argue against the Leader/Organizer Role enhancement

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Counsel for Defendant did not address the Leader/Organizer Role  
enhancement at sentencing. No evidence was produced in any court  
proceeding which indicated Defendant to be in a leadership role.  
Evidence shows that Defendant played a lesser role in the conspiracy  
which involved several individuals, including those who did play  
integral roles in the leadership. Defendant's counsel's failure to  
argue this key enhancement resulting in prejudice against Defendant  
in that he received an additional two (2) point enhancement.

**(b) Direct Appeal of Ground One:**

- (1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

- (2) If you did not raise this issue in your direct appeal, explain why: \_\_\_\_\_

**(c) Post-Conviction Proceedings:**

- (1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

- (2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

- (3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: I did not realize until after my time for appeal had

expired that my counsel failed to argue this point. I depended

upon my counsel to investigate and argue all areas which were

available to me. I only recently discovered caselaw that supports

my position that "(m)ere culpability is not sufficient to render

one a leader, organizer, manager or supervisor." (US v Avila, 95 F3d

**GROUND TWO:** Defendant's counsel was ineffective 887 (9th Cir 1996)).

and deficient in that he failed to give me a full understanding of

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

the proffering process.

During the meeting in which a proffer had been extended to me, my

counsel did not fully explain my rights as it pertained to Rule 11

and the divulging of information to authorities. I had no

information which I felt to be pertinent to the questions asked of

me, therefore the proffer was not extended to me. My counsel failed

to intervene and inform me that the information I could have given

was sufficient. Due to this failure by my counsel, I was prejudiced

in that I was not able to take advantage of the Government's offer

of fifty-seven (57) month recommendation upon my plea of guilty.

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: \_\_\_\_\_

**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: \_\_\_\_\_



**GROUND THREE:** Defendant's counsel was ineffective and deficient in  
that he failed to argue the amount of marijuana upon which I was sentenced

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Defendant's counsel did not argue the point that this Court  
sentenced Defendant based upon an amount of a controlled substance  
for which there was no evidence. Evidence produced before this  
Court was not sufficient for this Court to use as a basis for the  
base amount by which Defendant was sentenced.

**(b) Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why:

**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐

No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: \_\_\_\_\_

**GROUND FOUR:** Defendant's counsel was ineffective and deficient in

that he gave Defendant advice which caused Defendant to not take

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

advantage of the fifty-seven (57) month plea offer.

Defendant was extended an offer of fifty-seven (57) months by the  
Government. Defendant was advised by his counsel to take certain  
actions which caused this offer to be rescinded, thus causing  
Defendant to be unable to take full advantage of the offer.

Defendant followed the advice of counsel without full understanding  
of the ramifications.

(b) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐

No ☐

(2) If you did not raise this issue in your direct appeal, explain why:



**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: \_\_\_\_\_

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

All grounds raised in this motion have only recently been  
discovered by Defendant. Defendant has not filed any other  
motions or presented these grounds because he was fully

dependent upon his counsel to properly advise him as to these matters.

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the you are challenging? Yes ☐ No ☒
- If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

15. Give the name and address, if known, of each attorney who represented you in the following stages of the you are challenging:

(a) At the preliminary hearing:

(b) At the arraignment and plea:

(c) At the trial:

(d) At sentencing:

(e) On appeal:

(f) In any post-conviction proceeding:

(g) On appeal from any ruling against you in a post-conviction proceeding:

16. Were you sentenced on more than one court of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future?      Yes ☐      No ☐

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- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has

been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, movant asks that the Court grant the following relief: That the Court authorize  
a resentencing in this Case and allow Defendant to raise the  
objections stated herein.  
or any other relief to which movant may be entitled.

\_\_\_\_\_  
Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system, first class postage prepaid on  
December 21, 2016 (month, date, year).

Executed (signed) on December 21, 2016 (date)

Brian Hannon  
Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_